

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

COOPER TIRE & RUBBER COMPANY

PLAINTIFF

V.

CAUSE NO.: 3:02CV210-SA

JOHN BOOTH FARESE, et al.

DEFENDANTS

ORDER DENYING MOTION FOR RECONSIDERATION

This cause comes for consideration on Plaintiff's Motion for Reconsideration of this Court's Civil Minute Order vacating the August 2003 Order bifurcating the trial into liability and damages phases.

The Court denies the Motion for Reconsideration for the reasons given in its bench opinion given on April 30, 2008. To reiterate, the Court relied on Biglane v. Under the Hill, Corp., 949 So. 2d 9 (Miss. 2007), which held that actual damages, not nominal damages, must be proven in order to succeed on a tortious interference claim. The Fifth Circuit has cautioned that in order to grant the bifurcation, "the issue to be tried must be so distinct and separable from the others that a trial of it alone may be had without injustice." Response of Caroline, Inc. v. Leasco Response, Inc., 537 F.2d 1323, 1324 (5th Cir. 1976). The issues *sub judice* are not distinct and separable, since damages is an essential element of tortious interference claim

Thus, in accordance with its bench opinion on April 30, 2008, and this opinion, Plaintiff's Motion for Reconsideration and to bifurcate is **DENIED**.

So **ORDERED**, this, the 5th day of June, 2008.

/s/ Sharion Aycock
U.S. DISTRICT COURT JUDGE